

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

**SHERRY ADAMS, Individually and as
proposed Class Representative,**

Plaintiff,

v.

No. CIV 03-603 BB/LFG

**STATE OF NEW MEXICO, and its
subsidiaries: the Motor Vehicle Division
of the New Mexico Taxation and Revenue
Department; and the New Mexico State
Police Department of the Department of
Public Safety, and JONATHAN WHITE,
a New Mexico State Police Officer, in his
individual capacity,**

Defendants.

MEMORANDUM OPINION
AND
ORDER DENYING RULE 59 MOTION

**A RULE 59(E) MOTION shall be filed no later than ten days after entry
of the judgment. *See Fed. R. Civ. P. 59(E).* The Court's order was entered on
August 6, 2003, but Plaintiff waited until Tuesday, August 19, 2003, to file her
Rule 59(E) motion. Since it was filed more than ten days after the entry of the
Court's order, Plaintiff's Rule 59(E) motion is untimely and must be Denied.**

Martin v. Wainwright, 469 F.2d 1072 (5th Cir. 1972); Kerry Coal Co. v. United

Mine Workers of America, 488 F. Supp. 1080 (W.D. Pa. 1980), *aff'd*, 637 F.2d 957 (3d Cir. 1981).

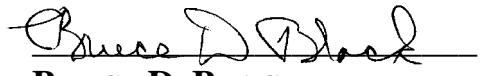
Plaintiff also seeks to argue the Court should open its prior judgment to allow Plaintiff to amend her complaint to challenge the officer's failure to warn her of direct, rather than collateral, consequences. Rule 59 is not a devise to allow a party to present its case under a new theory. *Milwee v. Peachtree Cypress Inv. Co.* 510 F. Supp. 284 (E.D. Tenn. 1978), *aff'd*, 644 F.2d 885 (6th Cir. 1981); *Greengrass Enter., Inc. v. Rotfeld*, 83 F.R.D. 159 (E.D. Pa. 1979).

Finally, even if Plaintiff's motion was timely and within the intent of Rule 59, the Court doubts its merit. The Court has already twice provided Plaintiff with legal authority in support of the ruling that she has failed to allege a constitutional violation, and Plaintiff now merely argues that one of the cases from New York cited in the Court's ruling is distinguishable. Plaintiff fails to address the other substantial federal and state case law contained in the Court's two memorandum opinions. Nor does Plaintiff present cases directly supporting her position in a similar factual setting.

ORDER

For the above stated reasons, Plaintiff's *Motion to Set Aside Judgment* and *To Grant Plaintiff Leave to Amend* [#24] is DENIED.

DATED this 31st day of October, 2003.


BRUCE D. BLACK
United States District Judge

For Plaintiff:

Dennis W. Montoya, Albuquerque, NM

For Defendants:

**David Tourek, Peggy Wikle, New Mexico Attorney General's Office,
Santa Fe, NM**